

1 **“SEC. 615. PROCEDURAL SAFEGUARDS.**

2 “(a) ESTABLISHMENT OF PROCEDURES.—Any State
3 educational agency, State agency, or local educational
4 agency that receives assistance under this part shall estab-
5 lish and maintain procedures in accordance with this sec-
6 tion to ensure that children with disabilities and their par-
7 ents are guaranteed procedural safeguards with respect to
8 the provision of a free appropriate public education by
9 such agencies.

10 “(b) TYPES OF PROCEDURES.—The procedures re-
11 quired by this section shall include the following:

12 “(1) An opportunity for the parents of a child
13 with a disability to examine all records relating to
14 such child and to participate in meetings with re-
15 spect to the identification, evaluation, and edu-
16 cational placement of the child, and the provision of
17 a free appropriate public education to such child,
18 and to obtain an independent educational evaluation
19 of the child.

20 “(2)(A) Procedures to protect the rights of the
21 child whenever the parents of the child are not
22 known, the agency cannot, after reasonable efforts,
23 locate the parents, or the child is a ward of the
24 State, including the assignment of an individual to
25 act as a surrogate for the parents, which surrogate
26 shall not be an employee of the State educational

1 agency, the local educational agency, or any other
2 agency that is involved in the education or care of
3 the child. In the case of—

4 “(i) a child who is a ward of the State,
5 such surrogate may alternatively be appointed
6 by the judge overseeing the child’s care pro-
7 vided that the surrogate meets the requirements
8 of this paragraph; and

9 “(ii) an unaccompanied homeless youth as
10 defined in section 725(6) of the McKinney-
11 Vento Homeless Assistance Act (42 U.S.C.
12 11434a(6)), the local educational agency shall
13 appoint a surrogate in accordance with this
14 paragraph.

15 “(B) The State shall make reasonable efforts to
16 ensure the assignment of a surrogate not more than
17 30 days after there is a determination by the agency
18 that the child needs a surrogate.

19 “(3) Written prior notice to the parents of the
20 child, in accordance with subsection (c)(1), whenever
21 the local educational agency—

22 “(A) proposes to initiate or change; or

23 “(B) refuses to initiate or change,

1 the identification, evaluation, or educational place-
2 ment of the child, or the provision of a free appro-
3 priate public education to the child.

4 “(4) Procedures designed to ensure that the no-
5 tice required by paragraph (3) is in the native lan-
6 guage of the parents, unless it clearly is not feasible
7 to do so.

8 “(5) An opportunity for mediation, in accord-
9 ance with subsection (e).

10 “(6) An opportunity for any party to present a
11 complaint—

12 “(A) with respect to any matter relating to
13 the identification, evaluation, or educational
14 placement of the child, or the provision of a free
15 appropriate public education to such child; and

16 “(B) which sets forth an alleged violation
17 that occurred not more than 2 years before the
18 date the parent or public agency knew or should
19 have known about the alleged action that forms
20 the basis of the complaint, or, if the State has
21 an explicit time limitation for presenting such a
22 complaint under this part, in such time as the
23 State law allows, except that the exceptions to
24 the timeline described in subsection (f)(3)(D)

1 shall apply to the timeline described in this sub-
2 paragraph.

3 “(7)(A) Procedures that require either party, or
4 the attorney representing a party, to provide due
5 process complaint notice in accordance with sub-
6 section (c)(2) (which shall remain confidential)—

7 “(i) to the other party, in the complaint
8 filed under paragraph (6), and forward a copy
9 of such notice to the State educational agency;
10 and

11 “(ii) that shall include—

12 “(I) the name of the child, the ad-
13 dress of the residence of the child (or avail-
14 able contact information in the case of a
15 homeless child), and the name of the
16 school the child is attending;

17 “(II) in the case of a homeless child
18 or youth (within the meaning of section
19 725(2) of the McKinney-Vento Homeless
20 Assistance Act (42 U.S.C. 11434a(2)),
21 available contact information for the child
22 and the name of the school the child is at-
23 tending;

24 “(III) a description of the nature of
25 the problem of the child relating to such

1 proposed initiation or change, including
2 facts relating to such problem; and

3 “(IV) a proposed resolution of the
4 problem to the extent known and available
5 to the party at the time.

6 “(B) A requirement that a party may not have
7 a due process hearing until the party, or the attor-
8 ney representing the party, files a notice that meets
9 the requirements of subparagraph (A)(ii).

10 “(8) Procedures that require the State edu-
11 cational agency to develop a model form to assist
12 parents in filing a complaint and due process com-
13 plaint notice in accordance with paragraphs (6) and
14 (7), respectively.

15 “(c) NOTIFICATION REQUIREMENTS.—

16 “(1) CONTENT OF PRIOR WRITTEN NOTICE.—
17 The notice required by subsection (b)(3) shall
18 include—

19 “(A) a description of the action proposed
20 or refused by the agency;

21 “(B) an explanation of why the agency
22 proposes or refuses to take the action and a de-
23 scription of each evaluation procedure, assess-
24 ment, record, or report the agency used as a
25 basis for the proposed or refused action;

1 “(C) a statement that the parents of a
2 child with a disability have protection under the
3 procedural safeguards of this part and, if this
4 notice is not an initial referral for evaluation,
5 the means by which a copy of a description of
6 the procedural safeguards can be obtained;

7 “(D) sources for parents to contact to ob-
8 tain assistance in understanding the provisions
9 of this part;

10 “(E) a description of other options consid-
11 ered by the IEP Team and the reason why
12 those options were rejected; and

13 “(F) a description of the factors that are
14 relevant to the agency’s proposal or refusal.

15 “(2) DUE PROCESS COMPLAINT NOTICE.—

16 “(A) COMPLAINT.—The due process com-
17 plaint notice required under subsection
18 (b)(7)(A) shall be deemed to be sufficient un-
19 less the party receiving the notice notifies the
20 hearing officer and the other party in writing
21 that the receiving party believes the notice has
22 not met the requirements of subsection
23 (b)(7)(A).

24 “(B) RESPONSE TO COMPLAINT.—

1 “(i) LOCAL EDUCATIONAL AGENCY
2 RESPONSE.—

3 “(I) IN GENERAL.—If the local
4 educational agency has not sent a
5 prior written notice to the parent re-
6 garding the subject matter contained
7 in the parent’s due process complaint
8 notice, such local educational agency
9 shall, within 10 days of receiving the
10 complaint, send to the parent a re-
11 sponse that shall include—

12 “(aa) an explanation of why
13 the agency proposed or refused to
14 take the action raised in the com-
15 plaint;

16 “(bb) a description of other
17 options that the IEP Team con-
18 sidered and the reasons why
19 those options were rejected;

20 “(cc) a description of each
21 evaluation procedure, assessment,
22 record, or report the agency used
23 as the basis for the proposed or
24 refused action; and

1 “(dd) a description of the
2 factors that are relevant to the
3 agency’s proposal or refusal.

4 “(II) SUFFICIENCY.— A response
5 filed by a local educational agency
6 pursuant to subclause (I) shall not be
7 construed to preclude such local edu-
8 cational agency from asserting that
9 the parent’s due process complaint no-
10 tice was insufficient where appro-
11 priate.

12 “(ii) OTHER PARTY RESPONSE.—Ex-
13 cept as provided in clause (i), the non-com-
14 plaining party shall, within 10 days of re-
15 ceiving the complaint, send to the com-
16 plaint a response that specifically address-
17 es the issues raised in the complaint.

18 “(C) TIMING.—The party providing a
19 hearing officer notification under subparagraph
20 (A) shall provide the notification within 15 days
21 of receiving the complaint.

22 “(D) DETERMINATION.—Within 5 days of
23 receipt of the notification provided under sub-
24 paragraph (C), the hearing officer shall make a
25 determination on the face of the notice of

1 whether the notification meets the requirements
2 of subsection (b)(7)(A), and shall immediately
3 notify the parties in writing of such determina-
4 tion.

5 “(E) AMENDED COMPLAINT NOTICE.—

6 “(i) IN GENERAL.—A party may
7 amend its due process complaint notice
8 only if—

9 “(I) the other party consents in
10 writing to such amendment and is
11 given the opportunity to resolve the
12 complaint through a meeting held
13 pursuant to subsection (f)(1)(B); or

14 “(II) the hearing officer grants
15 permission, except that the hearing of-
16 ficer may only grant such permission
17 at any time not later than 5 days be-
18 fore a due process hearing occurs.

19 “(ii) APPLICABLE TIMELINE.—The
20 applicable timeline for a due process hear-
21 ing under this part shall recommence at
22 the time the party files an amended notice,
23 including the timeline under subsection
24 (f)(1)(B).

25 “(d) PROCEDURAL SAFEGUARDS NOTICE.—

1 “(1) IN GENERAL.—

2 “(A) COPY TO PARENTS.—A copy of the
3 procedural safeguards available to the parents
4 of a child with a disability shall be given to the
5 parents only 1 time a year, except that a copy
6 also shall be given to the parents—

7 “(i) upon initial referral or parental
8 request for evaluation;

9 “(ii) upon the first occurrence of the
10 filing of a complaint under subsection
11 (b)(6); and

12 “(iii) upon request by a parent.

13 “(B) INTERNET WEBSITE.—A local edu-
14 cational agency may place a current copy of the
15 procedural safeguards notice on its Internet
16 website if such website exists.

17 “(2) CONTENTS.—The procedural safeguards
18 notice shall include a full explanation of the proce-
19 dural safeguards, written in the native language of
20 the parents (unless it clearly is not feasible to do so)
21 and written in an easily understandable manner,
22 available under this section and under regulations
23 promulgated by the Secretary relating to—

24 “(A) independent educational evaluation;

25 “(B) prior written notice;

1 “(C) parental consent;

2 “(D) access to educational records;

3 “(E) the opportunity to present and re-
4 solve complaints, including—

5 “(i) the time period in which to make
6 a complaint;

7 “(ii) the opportunity for the agency to
8 resolve the complaint; and

9 “(iii) the availability of mediation;

10 “(F) the child’s placement during pend-
11 ency of due process proceedings;

12 “(G) procedures for students who are sub-
13 ject to placement in an interim alternative edu-
14 cational setting;

15 “(H) requirements for unilateral placement
16 by parents of children in private schools at pub-
17 lic expense;

18 “(I) due process hearings, including re-
19 quirements for disclosure of evaluation results
20 and recommendations;

21 “(J) State-level appeals (if applicable in
22 that State);

23 “(K) civil actions, including the time pe-
24 riod in which to file such actions; and

25 “(L) attorneys’ fees.

1 “(e) MEDIATION.—

2 “(1) IN GENERAL.—Any State educational
3 agency or local educational agency that receives as-
4 sistance under this part shall ensure that procedures
5 are established and implemented to allow parties to
6 disputes involving any matter, including matters
7 arising prior to the filing of a complaint pursuant to
8 subsection (b)(6), to resolve such disputes through a
9 mediation process.

10 “(2) REQUIREMENTS.—Such procedures shall
11 meet the following requirements:

12 “(A) The procedures shall ensure that the
13 mediation process—

14 “(i) is voluntary on the part of the
15 parties;

16 “(ii) is not used to deny or delay a
17 parent’s right to a due process hearing
18 under subsection (f), or to deny any other
19 rights afforded under this part; and

20 “(iii) is conducted by a qualified and
21 impartial mediator who is trained in effec-
22 tive mediation techniques.

23 “(B) OPPORTUNITY TO MEET WITH A DIS-
24 INTERESTED PARTY.—A local educational agen-
25 cy or a State agency may establish procedures

1 to offer to parents and schools that choose not
2 to use the mediation process, an opportunity to
3 meet, at a time and location convenient to the
4 parents, with a disinterested party who is under
5 contract with—

6 “(i) a parent training and information
7 center or community parent resource cen-
8 ter in the State established under section
9 671 or 672; or

10 “(ii) an appropriate alternative dis-
11 pute resolution entity,
12 to encourage the use, and explain the benefits,
13 of the mediation process to the parents.

14 “(C) LIST OF QUALIFIED MEDIATORS.—
15 The State shall maintain a list of individuals
16 who are qualified mediators and knowledgeable
17 in laws and regulations relating to the provision
18 of special education and related services.

19 “(D) COSTS.—The State shall bear the
20 cost of the mediation process, including the
21 costs of meetings described in subparagraph
22 (B).

23 “(E) SCHEDULING AND LOCATION.—Each
24 session in the mediation process shall be sched-
25 uled in a timely manner and shall be held in a

1 location that is convenient to the parties to the
2 dispute.

3 “(F) WRITTEN AGREEMENT.—In the case
4 that a resolution is reached to resolve the com-
5 plaint through the mediation process, the par-
6 ties shall execute a legally binding agreement
7 that sets forth such resolution and that—

8 “(i) states that all discussions that oc-
9 curred during the mediation process shall
10 be confidential and may not be used as evi-
11 dence in any subsequent due process hear-
12 ing or civil proceeding;

13 “(ii) is signed by both the parent and
14 a representative of the agency who has the
15 authority to bind such agency; and

16 “(iii) is enforceable in any State court
17 of competent jurisdiction or in a district
18 court of the United States.

19 “(G) MEDIATION DISCUSSIONS.—Discus-
20 sions that occur during the mediation process
21 shall be confidential and may not be used as
22 evidence in any subsequent due process hearing
23 or civil proceeding.

24 “(f) IMPARTIAL DUE PROCESS HEARING.—

25 “(1) IN GENERAL.—

1 “(A) HEARING.—Whenever a complaint
2 has been received under subsection (b)(6) or
3 (k), the parents or the local educational agency
4 involved in such complaint shall have an oppor-
5 tunity for an impartial due process hearing,
6 which shall be conducted by the State edu-
7 cational agency or by the local educational
8 agency, as determined by State law or by the
9 State educational agency.

10 “(B) RESOLUTION SESSION.—

11 “(i) PRELIMINARY MEETING.—Prior
12 to the opportunity for an impartial due
13 process hearing under subparagraph (A),
14 the local educational agency shall convene
15 a meeting with the parents and the rel-
16 evant member or members of the IEP
17 Team who have specific knowledge of the
18 facts identified in the complaint—

19 “(I) within 15 days of receiving
20 notice of the parents’ complaint;

21 “(II) which shall include a rep-
22 resentative of the agency who has de-
23 cisionmaking authority on behalf of
24 such agency;

1 “(III) which may not include an
2 attorney of the local educational agen-
3 cy unless the parent is accompanied
4 by an attorney; and

5 “(IV) where the parents of the
6 child discuss their complaint, and the
7 facts that form the basis of the com-
8 plaint, and the local educational agen-
9 cy is provided the opportunity to re-
10 solve the complaint,

11 unless the parents and the local edu-
12 cational agency agree in writing to waive
13 such meeting, or agree to use the medi-
14 ation process described in subsection (e).

15 “(ii) HEARING.—If the local edu-
16 cational agency has not resolved the com-
17 plaint to the satisfaction of the parents
18 within 30 days of the receipt of the com-
19 plaint, the due process hearing may occur,
20 and all of the applicable timelines for a
21 due process hearing under this part shall
22 commence.

23 “(iii) WRITTEN SETTLEMENT AGREE-
24 MENT.—In the case that a resolution is
25 reached to resolve the complaint at a meet-

1 ing described in clause (i), the parties shall
2 execute a legally binding agreement that
3 is—

4 “(I) signed by both the parent
5 and a representative of the agency
6 who has the authority to bind such
7 agency; and

8 “(II) enforceable in any State
9 court of competent jurisdiction or in a
10 district court of the United States.

11 “(iv) REVIEW PERIOD.—If the parties
12 execute an agreement pursuant to clause
13 (iii), a party may void such agreement
14 within 3 business days of the agreement’s
15 execution.

16 “(2) DISCLOSURE OF EVALUATIONS AND REC-
17 OMMENDATIONS.—

18 “(A) IN GENERAL.—Not less than 5 busi-
19 ness days prior to a hearing conducted pursu-
20 ant to paragraph (1), each party shall disclose
21 to all other parties all evaluations completed by
22 that date, and recommendations based on the
23 offering party’s evaluations, that the party in-
24 tends to use at the hearing.

1 “(B) FAILURE TO DISCLOSE.—A hearing
2 officer may bar any party that fails to comply
3 with subparagraph (A) from introducing the
4 relevant evaluation or recommendation at the
5 hearing without the consent of the other party.

6 “(3) LIMITATIONS ON HEARING.—

7 “(A) PERSON CONDUCTING HEARING.—A
8 hearing officer conducting a hearing pursuant
9 to paragraph (1)(A) shall, at a minimum—

10 “(i) not be—

11 “(I) an employee of the State
12 educational agency or the local edu-
13 cational agency involved in the edu-
14 cation or care of the child; or

15 “(II) a person having a personal
16 or professional interest that conflicts
17 with the person’s objectivity in the
18 hearing;

19 “(ii) possess knowledge of, and the
20 ability to understand, the provisions of this
21 title, Federal and State regulations per-
22 taining to this title, and legal interpreta-
23 tions of this title by Federal and State
24 courts;

1 “(iii) possess the knowledge and abil-
2 ity to conduct hearings in accordance with
3 appropriate, standard legal practice; and

4 “(iv) possess the knowledge and abil-
5 ity to render and write decisions in accord-
6 ance with appropriate, standard legal prac-
7 tice.

8 “(B) SUBJECT MATTER OF HEARING.—
9 The party requesting the due process hearing
10 shall not be allowed to raise issues at the due
11 process hearing that were not raised in the no-
12 tice filed under subsection (b)(7), unless the
13 other party agrees otherwise.

14 “(C) TIMELINE FOR REQUESTING HEAR-
15 ING.—A parent or agency shall request an im-
16 partial due process hearing within 2 years of
17 the date the parent or agency knew or should
18 have known about the alleged action that forms
19 the basis of the complaint, or, if the State has
20 an explicit time limitation for requesting such a
21 hearing under this part, in such time as the
22 State law allows.

23 “(D) EXCEPTIONS TO THE TIMELINE.—
24 The timeline described in subparagraph (C)

1 shall not apply to a parent if the parent was
2 prevented from requesting the hearing due to—

3 “(i) specific misrepresentations by the
4 local educational agency that it had re-
5 solved the problem forming the basis of the
6 complaint; or

7 “(ii) the local educational agency’s
8 withholding of information from the parent
9 that was required under this part to be
10 provided to the parent.

11 “(E) DECISION OF HEARING OFFICER.—

12 “(i) IN GENERAL.—Subject to clause
13 (ii), a decision made by a hearing officer
14 shall be made on substantive grounds
15 based on a determination of whether the
16 child received a free appropriate public
17 education.

18 “(ii) PROCEDURAL ISSUES.—In mat-
19 ters alleging a procedural violation, a hear-
20 ing officer may find that a child did not re-
21 ceive a free appropriate public education
22 only if the procedural inadequacies—

23 “(I) impeded the child’s right to
24 a free appropriate public education;

1 “(II) significantly impeded the
2 parents’ opportunity to participate in
3 the decisionmaking process regarding
4 the provision of a free appropriate
5 public education to the parents’ child;
6 or

7 “(III) caused a deprivation of
8 educational benefits.

9 “(iii) RULE OF CONSTRUCTION.—
10 Nothing in this subparagraph shall be con-
11 strued to preclude a hearing officer from
12 ordering a local educational agency to com-
13 ply with procedural requirements under
14 this section.

15 “(F) RULE OF CONSTRUCTION.—Nothing
16 in this paragraph shall be construed to affect
17 the right of a parent to file a complaint with
18 the State educational agency.

19 “(g) APPEAL.—

20 “(1) IN GENERAL.—If the hearing required by
21 subsection (f) is conducted by a local educational
22 agency, any party aggrieved by the findings and de-
23 cision rendered in such a hearing may appeal such
24 findings and decision to the State educational agen-
25 cy.

1 “(2) IMPARTIAL REVIEW AND INDEPENDENT
2 DECISION.—The State educational agency shall con-
3 duct an impartial review of the findings and decision
4 appealed under paragraph (1). The officer con-
5 ducting such review shall make an independent deci-
6 sion upon completion of such review.

7 “(h) SAFEGUARDS.—Any party to a hearing con-
8 ducted pursuant to subsection (f) or (k), or an appeal con-
9 ducted pursuant to subsection (g), shall be accorded—

10 “(1) the right to be accompanied and advised
11 by counsel and by individuals with special knowledge
12 or training with respect to the problems of children
13 with disabilities;

14 “(2) the right to present evidence and confront,
15 cross-examine, and compel the attendance of wit-
16 nesses;

17 “(3) the right to a written, or, at the option of
18 the parents, electronic verbatim record of such hear-
19 ing; and

20 “(4) the right to written, or, at the option of
21 the parents, electronic findings of fact and decisions,
22 which findings and decisions—

23 “(A) shall be made available to the public
24 consistent with the requirements of section

1 617(b) (relating to the confidentiality of data,
2 information, and records); and

3 “(B) shall be transmitted to the advisory
4 panel established pursuant to section
5 612(a)(21).

6 “(i) ADMINISTRATIVE PROCEDURES.—

7 “(1) IN GENERAL.—

8 “(A) DECISION MADE IN HEARING.—A de-
9 cision made in a hearing conducted pursuant to
10 subsection (f) or (k) shall be final, except that
11 any party involved in such hearing may appeal
12 such decision under the provisions of subsection
13 (g) and paragraph (2).

14 “(B) DECISION MADE AT APPEAL.—A de-
15 cision made under subsection (g) shall be final,
16 except that any party may bring an action
17 under paragraph (2).

18 “(2) RIGHT TO BRING CIVIL ACTION.—

19 “(A) IN GENERAL.—Any party aggrieved
20 by the findings and decision made under sub-
21 section (f) or (k) who does not have the right
22 to an appeal under subsection (g), and any
23 party aggrieved by the findings and decision
24 made under this subsection, shall have the right
25 to bring a civil action with respect to the com-

1 plaint presented pursuant to this section, which
2 action may be brought in any State court of
3 competent jurisdiction or in a district court of
4 the United States, without regard to the
5 amount in controversy.

6 “(B) LIMITATION.—The party bringing the
7 action shall have 90 days from the date of the
8 decision of the hearing officer to bring such an
9 action, or, if the State has an explicit time limi-
10 tation for bringing such action under this part,
11 in such time as the State law allows.

12 “(C) ADDITIONAL REQUIREMENTS.—In
13 any action brought under this paragraph, the
14 court—

15 “(i) shall receive the records of the
16 administrative proceedings;

17 “(ii) shall hear additional evidence at
18 the request of a party; and

19 “(iii) basing its decision on the pre-
20 ponderance of the evidence, shall grant
21 such relief as the court determines is ap-
22 propriate.

23 “(3) JURISDICTION OF DISTRICT COURTS; AT-
24 TORNEYS’ FEES.—

1 “(A) IN GENERAL.—The district courts of
2 the United States shall have jurisdiction of ac-
3 tions brought under this section without regard
4 to the amount in controversy.

5 “(B) AWARD OF ATTORNEYS’ FEES.—

6 “(i) IN GENERAL.—In any action or
7 proceeding brought under this section, the
8 court, in its discretion, may award reason-
9 able attorneys’ fees as part of the costs—

10 “(I) to a prevailing party who is
11 the parent of a child with a disability;

12 “(II) to a prevailing party who is
13 a State educational agency or local
14 educational agency against the attor-
15 ney of a parent who files a complaint
16 or subsequent cause of action that is
17 frivolous, unreasonable, or without
18 foundation, or against the attorney of
19 a parent who continued to litigate
20 after the litigation clearly became friv-
21 olous, unreasonable, or without foun-
22 dation; or

23 “(III) to a prevailing State edu-
24 cational agency or local educational
25 agency against the attorney of a par-

1 ent, or against the parent, if the par-
2 ent's complaint or subsequent cause of
3 action was presented for any improper
4 purpose, such as to harass, to cause
5 unnecessary delay, or to needlessly in-
6 crease the cost of litigation.

7 “(ii) RULE OF CONSTRUCTION.—
8 Nothing in this subparagraph shall be con-
9 strued to affect section 327 of the District
10 of Columbia Appropriations Act, 2005.

11 “(C) DETERMINATION OF AMOUNT OF AT-
12 TORNEYS' FEES.—Fees awarded under this
13 paragraph shall be based on rates prevailing in
14 the community in which the action or pro-
15 ceeding arose for the kind and quality of serv-
16 ices furnished. No bonus or multiplier may be
17 used in calculating the fees awarded under this
18 subsection.

19 “(D) PROHIBITION OF ATTORNEYS' FEES
20 AND RELATED COSTS FOR CERTAIN SERV-
21 ICES.—

22 “(i) IN GENERAL.—Attorneys' fees
23 may not be awarded and related costs may
24 not be reimbursed in any action or pro-
25 ceeding under this section for services per-

1 formed subsequent to the time of a written
2 offer of settlement to a parent if—

3 “(I) the offer is made within the
4 time prescribed by Rule 68 of the
5 Federal Rules of Civil Procedure or,
6 in the case of an administrative pro-
7 ceeding, at any time more than 10
8 days before the proceeding begins;

9 “(II) the offer is not accepted
10 within 10 days; and

11 “(III) the court or administrative
12 hearing officer finds that the relief fi-
13 nally obtained by the parents is not
14 more favorable to the parents than
15 the offer of settlement.

16 “(ii) IEP TEAM MEETINGS.—Attor-
17 neys’ fees may not be awarded relating to
18 any meeting of the IEP Team unless such
19 meeting is convened as a result of an ad-
20 ministrative proceeding or judicial action,
21 or, at the discretion of the State, for a me-
22 diation described in subsection (e).

23 “(iii) OPPORTUNITY TO RESOLVE
24 COMPLAINTS.—A meeting conducted pur-

1 suant to subsection (f)(1)(B)(i) shall not
2 be considered—

3 “(I) a meeting convened as a re-
4 sult of an administrative hearing or
5 judicial action; or

6 “(II) an administrative hearing
7 or judicial action for purposes of this
8 paragraph.

9 “(E) EXCEPTION TO PROHIBITION ON AT-
10 TORNEYS’ FEES AND RELATED COSTS.—Not-
11 withstanding subparagraph (D), an award of
12 attorneys’ fees and related costs may be made
13 to a parent who is the prevailing party and who
14 was substantially justified in rejecting the set-
15 tlement offer.

16 “(F) REDUCTION IN AMOUNT OF ATTOR-
17 NEYS’ FEES.—Except as provided in subpara-
18 graph (G), whenever the court finds that—

19 “(i) the parent, or the parent’s attor-
20 ney, during the course of the action or pro-
21 ceeding, unreasonably protracted the final
22 resolution of the controversy;

23 “(ii) the amount of the attorneys’ fees
24 otherwise authorized to be awarded unrea-
25 sonably exceeds the hourly rate prevailing

1 in the community for similar services by
2 attorneys of reasonably comparable skill,
3 reputation, and experience;

4 “(iii) the time spent and legal services
5 furnished were excessive considering the
6 nature of the action or proceeding; or

7 “(iv) the attorney representing the
8 parent did not provide to the local edu-
9 cational agency the appropriate informa-
10 tion in the notice of the complaint de-
11 scribed in subsection (b)(7)(A),

12 the court shall reduce, accordingly, the amount
13 of the attorneys’ fees awarded under this sec-
14 tion.

15 “(G) EXCEPTION TO REDUCTION IN
16 AMOUNT OF ATTORNEYS’ FEES.—The provi-
17 sions of subparagraph (F) shall not apply in
18 any action or proceeding if the court finds that
19 the State or local educational agency unreason-
20 ably protracted the final resolution of the action
21 or proceeding or there was a violation of this
22 section.

23 “(j) MAINTENANCE OF CURRENT EDUCATIONAL
24 PLACEMENT.—Except as provided in subsection (k)(4),
25 during the pendency of any proceedings conducted pursu-

1 ant to this section, unless the State or local educational
2 agency and the parents otherwise agree, the child shall
3 remain in the then-current educational placement of the
4 child, or, if applying for initial admission to a public
5 school, shall, with the consent of the parents, be placed
6 in the public school program until all such proceedings
7 have been completed.

8 “(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL
9 SETTING.—

10 “(1) AUTHORITY OF SCHOOL PERSONNEL.—

11 “(A) CASE-BY-CASE DETERMINATION.—

12 School personnel may consider any unique cir-
13 cumstances on a case-by-case basis when deter-
14 mining whether to order a change in placement
15 for a child with a disability who violates a code
16 of student conduct.

17 “(B) AUTHORITY.—School personnel under
18 this subsection may remove a child with a dis-
19 ability who violates a code of student conduct
20 from their current placement to an appropriate
21 interim alternative educational setting, another
22 setting, or suspension, for not more than 10
23 school days (to the extent such alternatives are
24 applied to children without disabilities).

1 “(C) ADDITIONAL AUTHORITY.—If school
2 personnel seek to order a change in placement
3 that would exceed 10 school days and the be-
4 havior that gave rise to the violation of the
5 school code is determined not to be a manifesta-
6 tion of the child’s disability pursuant to sub-
7 paragraph (E), the relevant disciplinary proce-
8 dures applicable to children without disabilities
9 may be applied to the child in the same manner
10 and for the same duration in which the proce-
11 dures would be applied to children without dis-
12 abilities, except as provided in section 612(a)(1)
13 although it may be provided in an interim alter-
14 native educational setting.

15 “(D) SERVICES.—A child with a disability
16 who is removed from the child’s current place-
17 ment under subparagraph (G) (irrespective of
18 whether the behavior is determined to be a
19 manifestation of the child’s disability) or sub-
20 paragraph (C) shall—

21 “(i) continue to receive educational
22 services, as provided in section 612(a)(1),
23 so as to enable the child to continue to
24 participate in the general education cur-
25 riculum, although in another setting, and

1 to progress toward meeting the goals set
2 out in the child's IEP; and

3 “(ii) receive, as appropriate, a func-
4 tional behavioral assessment, behavioral
5 intervention services and modifications,
6 that are designed to address the behavior
7 violation so that it does not recur.

8 “(E) MANIFESTATION DETERMINATION.—

9 “(i) IN GENERAL.—Except as pro-
10 vided in subparagraph (B), within 10
11 school days of any decision to change the
12 placement of a child with a disability be-
13 cause of a violation of a code of student
14 conduct, the local educational agency, the
15 parent, and relevant members of the IEP
16 Team (as determined by the parent and
17 the local educational agency) shall review
18 all relevant information in the student's
19 file, including the child's IEP, any teacher
20 observations, and any relevant information
21 provided by the parents to determine—

22 “(I) if the conduct in question
23 was caused by, or had a direct and
24 substantial relationship to, the child's
25 disability; or

1 “(II) if the conduct in question
2 was the direct result of the local edu-
3 cational agency’s failure to implement
4 the IEP.

5 “(ii) MANIFESTATION.—If the local
6 educational agency, the parent, and rel-
7 evant members of the IEP Team deter-
8 mine that either subclause (I) or (II) of
9 clause (i) is applicable for the child, the
10 conduct shall be determined to be a mani-
11 festation of the child’s disability.

12 “(F) DETERMINATION THAT BEHAVIOR
13 WAS A MANIFESTATION.—If the local edu-
14 cational agency, the parent, and relevant mem-
15 bers of the IEP Team make the determination
16 that the conduct was a manifestation of the
17 child’s disability, the IEP Team shall—

18 “(i) conduct a functional behavioral
19 assessment, and implement a behavioral
20 intervention plan for such child, provided
21 that the local educational agency had not
22 conducted such assessment prior to such
23 determination before the behavior that re-
24 sulted in a change in placement described
25 in subparagraph (C) or (G);

“(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

“(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

“(G) SPECIAL CIRCUMSTANCES.—School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child’s disability, in cases where a child—

21 “(i) carries or possesses a weapon to
22 or at school, on school premises, or to or
23 at a school function under the jurisdiction
24 of a State or local educational agency;

1 “(ii) knowingly possesses or uses ille-
2 gal drugs, or sells or solicits the sale of a
3 controlled substance, while at school, on
4 school premises, or at a school function
5 under the jurisdiction of a State or local
6 educational agency; or

7 “(iii) has inflicted serious bodily in-
8 jury upon another person while at school,
9 on school premises, or at a school function
10 under the jurisdiction of a State or local
11 educational agency.

12 “(H) NOTIFICATION.—Not later than the
13 date on which the decision to take disciplinary
14 action is made, the local educational agency
15 shall notify the parents of that decision, and of
16 all procedural safeguards accorded under this
17 section.

18 “(2) DETERMINATION OF SETTING.—The in-
19 terim alternative educational setting in subpara-
20 graphs (C) and (G) of paragraph (1) shall be deter-
21 mined by the IEP Team.

22 “(3) APPEAL.—

23 “(A) IN GENERAL.—The parent of a child
24 with a disability who disagrees with any deci-
25 sion regarding placement, or the manifestation

1 determination under this subsection, or a local
2 educational agency that believes that maintain-
3 ing the current placement of the child is sub-
4 stantially likely to result in injury to the child
5 or to others, may request a hearing.

6 “(B) AUTHORITY OF HEARING OFFICER.—

7 “(i) IN GENERAL.—A hearing officer
8 shall hear, and make a determination re-
9 garding, an appeal requested under sub-
10 paragraph (A).

11 “(ii) CHANGE OF PLACEMENT
12 ORDER.—In making the determination
13 under clause (i), the hearing officer may
14 order a change in placement of a child
15 with a disability. In such situations, the
16 hearing officer may—

17 “(I) return a child with a dis-
18 ability to the placement from which
19 the child was removed; or

20 “(II) order a change in place-
21 ment of a child with a disability to an
22 appropriate interim alternative edu-
23 cational setting for not more than 45
24 school days if the hearing officer de-
25 termines that maintaining the current

1 placement of such child is substan-
2 tially likely to result in injury to the
3 child or to others.

4 “(4) PLACEMENT DURING APPEALS.—When an
5 appeal under paragraph (3) has been requested by
6 either the parent or the local educational agency—

7 “(A) the child shall remain in the interim
8 alternative educational setting pending the deci-
9 sion of the hearing officer or until the expira-
10 tion of the time period provided for in para-
11 graph (1)(C), whichever occurs first, unless the
12 parent and the State or local educational agen-
13 cy agree otherwise; and

14 “(B) the State or local educational agency
15 shall arrange for an expedited hearing, which
16 shall occur within 20 school days of the date
17 the hearing is requested and shall result in a
18 determination within 10 school days after the
19 hearing.

20 “(5) PROTECTIONS FOR CHILDREN NOT YET
21 ELIGIBLE FOR SPECIAL EDUCATION AND RELATED
22 SERVICES.—

23 “(A) IN GENERAL.—A child who has not
24 been determined to be eligible for special edu-
25 cation and related services under this part and

1 who has engaged in behavior that violates a
2 code of student conduct, may assert any of the
3 protections provided for in this part if the local
4 educational agency had knowledge (as deter-
5 mined in accordance with this paragraph) that
6 the child was a child with a disability before the
7 behavior that precipitated the disciplinary ac-
8 tion occurred.

9 “(B) BASIS OF KNOWLEDGE.—A local edu-
10 cational agency shall be deemed to have knowl-
11 edge that a child is a child with a disability if,
12 before the behavior that precipitated the dis-
13 ciplinary action occurred—

14 “(i) the parent of the child has ex-
15 pressed concern in writing to supervisory
16 or administrative personnel of the appro-
17 priate educational agency, or a teacher of
18 the child, that the child is in need of spe-
19 cial education and related services;

20 “(ii) the parent of the child has re-
21 quested an evaluation of the child pursuant
22 to section 614(a)(1)(B); or

23 “(iii) the teacher of the child, or other
24 personnel of the local educational agency,
25 has expressed specific concerns about a

1 pattern of behavior demonstrated by the
2 child, directly to the director of special
3 education of such agency or to other super-
4 visory personnel of the agency.

5 “(C) EXCEPTION.—A local educational
6 agency shall not be deemed to have knowledge
7 that the child is a child with a disability if the
8 parent of the child has not allowed an evalua-
9 tion of the child pursuant to section 614 or has
10 refused services under this part or the child has
11 been evaluated and it was determined that the
12 child was not a child with a disability under
13 this part.

14 “(D) CONDITIONS THAT APPLY IF NO
15 BASIS OF KNOWLEDGE.—

16 “(i) IN GENERAL.—If a local edu-
17 cational agency does not have knowledge
18 that a child is a child with a disability (in
19 accordance with subparagraph (B) or (C))
20 prior to taking disciplinary measures
21 against the child, the child may be sub-
22 jected to disciplinary measures applied to
23 children without disabilities who engaged
24 in comparable behaviors consistent with
25 clause (ii).

1 “(ii) LIMITATIONS.—If a request is
2 made for an evaluation of a child during
3 the time period in which the child is sub-
4 jected to disciplinary measures under this
5 subsection, the evaluation shall be con-
6 ducted in an expedited manner. If the child
7 is determined to be a child with a dis-
8 ability, taking into consideration informa-
9 tion from the evaluation conducted by the
10 agency and information provided by the
11 parents, the agency shall provide special
12 education and related services in accord-
13 ance with this part, except that, pending
14 the results of the evaluation, the child shall
15 remain in the educational placement deter-
16 mined by school authorities.

17 “(6) REFERRAL TO AND ACTION BY LAW EN-
18 FORCEMENT AND JUDICIAL AUTHORITIES.—

19 “(A) RULE OF CONSTRUCTION.—Nothing
20 in this part shall be construed to prohibit an
21 agency from reporting a crime committed by a
22 child with a disability to appropriate authorities
23 or to prevent State law enforcement and judi-
24 cial authorities from exercising their respon-
25 sibilities with regard to the application of Fed-

1 eral and State law to crimes committed by a
2 child with a disability.

3 “(B) TRANSMITTAL OF RECORDS.—An
4 agency reporting a crime committed by a child
5 with a disability shall ensure that copies of the
6 special education and disciplinary records of the
7 child are transmitted for consideration by the
8 appropriate authorities to whom the agency re-
9 ports the crime.

10 “(7) DEFINITIONS.—In this subsection:

11 “(A) CONTROLLED SUBSTANCE.—The
12 term ‘controlled substance’ means a drug or
13 other substance identified under schedule I, II,
14 III, IV, or V in section 202(c) of the Controlled
15 Substances Act (21 U.S.C. 812(c)).

16 “(B) ILLEGAL DRUG.—The term ‘illegal
17 drug’ means a controlled substance but does
18 not include a controlled substance that is legally
19 possessed or used under the supervision of a li-
20 censed health-care professional or that is legally
21 possessed or used under any other authority
22 under that Act or under any other provision of
23 Federal law.

24 “(C) WEAPON.—The term ‘weapon’ has
25 the meaning given the term ‘dangerous weapon’

1 under section 930(g)(2) of title 18, United
2 States Code.

3 “(D) SERIOUS BODILY INJURY.—The term
4 ‘serious bodily injury’ has the meaning given
5 the term ‘serious bodily injury’ under para-
6 graph (3) of subsection (h) of section 1365 of
7 title 18, United States Code.

8 “(I) RULE OF CONSTRUCTION.—Nothing in this title
9 shall be construed to restrict or limit the rights, proce-
10 dures, and remedies available under the Constitution, the
11 Americans with Disabilities Act of 1990, title V of the Re-
12 habilitation Act of 1973, or other Federal laws protecting
13 the rights of children with disabilities, except that before
14 the filing of a civil action under such laws seeking relief
15 that is also available under this part, the procedures under
16 subsections (f) and (g) shall be exhausted to the same ex-
17 tent as would be required had the action been brought
18 under this part.

19 “(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF
20 MAJORITY.—

21 “(1) IN GENERAL.—A State that receives
22 amounts from a grant under this part may provide
23 that, when a child with a disability reaches the age
24 of majority under State law (except for a child with

1 a disability who has been determined to be incom-
2 petent under State law)—

3 “(A) the agency shall provide any notice
4 required by this section to both the individual
5 and the parents;

6 “(B) all other rights accorded to parents
7 under this part transfer to the child;

8 “(C) the agency shall notify the individual
9 and the parents of the transfer of rights; and

10 “(D) all rights accorded to parents under
11 this part transfer to children who are incarcer-
12 ated in an adult or juvenile Federal, State, or
13 local correctional institution.

14 “(2) SPECIAL RULE.—If, under State law, a
15 child with a disability who has reached the age of
16 majority under State law, who has not been deter-
17 mined to be incompetent, but who is determined not
18 to have the ability to provide informed consent with
19 respect to the educational program of the child, the
20 State shall establish procedures for appointing the
21 parent of the child, or if the parent is not available,
22 another appropriate individual, to represent the edu-
23 cational interests of the child throughout the period
24 of eligibility of the child under this part.

1 “(n) ELECTRONIC MAIL.—A parent of a child with
2 a disability may elect to receive notices required under this
3 section by an electronic mail (e-mail) communication, if
4 the agency makes such option available.

5 “(o) SEPARATE COMPLAINT.—Nothing in this section
6 shall be construed to preclude a parent from filing a sepa-
7 rate due process complaint on an issue separate from a
8 due process complaint already filed.

9 **“SEC. 616. MONITORING, TECHNICAL ASSISTANCE, AND EN-**
10 **FORCEMENT.**

11 “(a) FEDERAL AND STATE MONITORING.—

12 “(1) IN GENERAL.—The Secretary shall—

13 “(A) monitor implementation of this part
14 through—

15 “(i) oversight of the exercise of gen-
16 eral supervision by the States, as required
17 in section 612(a)(11); and

18 “(ii) the State performance plans, de-
19 scribed in subsection (b);

20 “(B) enforce this part in accordance with
21 subsection (e); and

22 “(C) require States to—

23 “(i) monitor implementation of this
24 part by local educational agencies; and

1 “(ii) enforce this part in accordance
2 with paragraph (3) and subsection (e).

3 “(2) FOCUSED MONITORING.—The primary
4 focus of Federal and State monitoring activities de-
5 scribed in paragraph (1) shall be on—

6 “(A) improving educational results and
7 functional outcomes for all children with dis-
8 abilities; and

9 “(B) ensuring that States meet the pro-
10 gram requirements under this part, with a par-
11 ticular emphasis on those requirements that are
12 most closely related to improving educational
13 results for children with disabilities.

14 “(3) MONITORING PRIORITIES.—The Secretary
15 shall monitor the States, and shall require each
16 State to monitor the local educational agencies lo-
17 cated in the State (except the State exercise of gen-
18 eral supervisory responsibility), using quantifiable
19 indicators in each of the following priority areas,
20 and using such qualitative indicators as are needed
21 to adequately measure performance in the following
22 priority areas:

23 “(A) Provision of a free appropriate public
24 education in the least restrictive environment.

1 “(B) State exercise of general supervisory
2 authority, including child find, effective moni-
3 toring, the use of resolution sessions, mediation,
4 voluntary binding arbitration, and a system of
5 transition services as defined in sections
6 602(34) and 637(a)(9).

7 “(C) Disproportionate representation of ra-
8 cial and ethnic groups in special education and
9 related services, to the extent the representation
10 is the result of inappropriate identification.

11 “(4) PERMISSIVE AREAS OF REVIEW.—The Sec-
12 retary shall consider other relevant information and
13 data, including data provided by States under sec-
14 tion 618.

15 “(b) STATE PERFORMANCE PLANS.—

16 “(1) PLAN.—

17 “(A) IN GENERAL.—Not later than 1 year
18 after the date of enactment of the Individuals
19 with Disabilities Education Improvement Act of
20 2004, each State shall have in place a perform-
21 ance plan that evaluates that State’s efforts to
22 implement the requirements and purposes of
23 this part and describes how the State will im-
24 prove such implementation.

1 “(B) SUBMISSION FOR APPROVAL.—Each
2 State shall submit the State’s performance plan
3 to the Secretary for approval in accordance with
4 the approval process described in subsection (c).

5 “(C) REVIEW.—Each State shall review its
6 State performance plan at least once every 6
7 years and submit any amendments to the Sec-
8 retary.

9 “(2) TARGETS.—

10 “(A) IN GENERAL.—As a part of the State
11 performance plan described under paragraph
12 (1), each State shall establish measurable and
13 rigorous targets for the indicators established
14 under the priority areas described in subsection
15 (a)(3).

16 “(B) DATA COLLECTION.—

17 “(i) IN GENERAL.—Each State shall
18 collect valid and reliable information as
19 needed to report annually to the Secretary
20 on the priority areas described in sub-
21 section (a)(3).

22 “(ii) RULE OF CONSTRUCTION.—
23 Nothing in this title shall be construed to
24 authorize the development of a nationwide
25 database of personally identifiable informa-

1 tion on individuals involved in studies or
2 other collections of data under this part.

3 “(C) PUBLIC REPORTING AND PRIVACY.—

4 “ (i) IN GENERAL.—The State shall
5 use the targets established in the plan and
6 priority areas described in subsection
7 (a)(3) to analyze the performance of each
8 local educational agency in the State in im-
9 plementing this part.

10 “(ii) REPORT.—

11 “(I) PUBLIC REPORT.—The
12 State shall report annually to the pub-
13 lic on the performance of each local
14 educational agency located in the
15 State on the targets in the State’s
16 performance plan. The State shall
17 make the State’s performance plan
18 available through public means, in-
19 cluding by posting on the website of
20 the State educational agency, distribu-
21 tion to the media, and distribution
22 through public agencies.

23 “(II) STATE PERFORMANCE RE-
24 PORT.—The State shall report annu-
25 ally to the Secretary on the perform-

1 ance of the State under the State's
2 performance plan.

3 “(iii) PRIVACY.—The State shall not
4 report to the public or the Secretary any
5 information on performance that would re-
6 sult in the disclosure of personally identifi-
7 able information about individual children
8 or where the available data is insufficient
9 to yield statistically reliable information.

10 “(c) APPROVAL PROCESS.—

11 “(1) DEEMED APPROVAL.—The Secretary shall
12 review (including the specific provisions described in
13 subsection (b)) each performance plan submitted by
14 a State pursuant to subsection (b)(1)(B) and the
15 plan shall be deemed to be approved by the Sec-
16 retary unless the Secretary makes a written deter-
17 mination, prior to the expiration of the 120-day pe-
18 riod beginning on the date on which the Secretary
19 received the plan, that the plan does not meet the
20 requirements of this section, including the specific
21 provisions described in subsection (b).

22 “(2) DISAPPROVAL.—The Secretary shall not
23 finally disapprove a performance plan, except after
24 giving the State notice and an opportunity for a
25 hearing.

1 “(3) NOTIFICATION.—If the Secretary finds
2 that the plan does not meet the requirements, in
3 whole or in part, of this section, the Secretary
4 shall—

5 “(A) give the State notice and an oppor-
6 tunity for a hearing; and

7 “(B) notify the State of the finding, and in
8 such notification shall—

9 “(i) cite the specific provisions in the
10 plan that do not meet the requirements;
11 and

12 “(ii) request additional information,
13 only as to the provisions not meeting the
14 requirements, needed for the plan to meet
15 the requirements of this section.

16 “(4) RESPONSE.—If the State responds to the
17 Secretary’s notification described in paragraph
18 (3)(B) during the 30-day period beginning on the
19 date on which the State received the notification,
20 and resubmits the plan with the requested informa-
21 tion described in paragraph (3)(B)(ii), the Secretary
22 shall approve or disapprove such plan prior to the
23 later of—

1 “(A) the expiration of the 30-day period
2 beginning on the date on which the plan is re-
3 submitted; or

4 “(B) the expiration of the 120-day period
5 described in paragraph (1).

6 “(5) FAILURE TO RESPOND.—If the State does
7 not respond to the Secretary’s notification described
8 in paragraph (3)(B) during the 30-day period begin-
9 ning on the date on which the State received the no-
10 tification, such plan shall be deemed to be dis-
11 approved.

12 “(d) SECRETARY’S REVIEW AND DETERMINATION.—

13 “(1) REVIEW.—The Secretary shall annually
14 review the State performance report submitted pur-
15 suant to subsection (b)(2)(C)(ii)(II) in accordance
16 with this section.

17 “(2) DETERMINATION.—

18 “(A) IN GENERAL.—Based on the informa-
19 tion provided by the State in the State perform-
20 ance report, information obtained through mon-
21 itoring visits, and any other public information
22 made available, the Secretary shall determine if
23 the State—

24 “(i) meets the requirements and pur-
25 poses of this part;

1 “(ii) needs assistance in implementing
2 the requirements of this part;

3 “(iii) needs intervention in imple-
4 menting the requirements of this part; or

5 “(iv) needs substantial intervention in
6 implementing the requirements of this
7 part.

8 “(B) NOTICE AND OPPORTUNITY FOR A
9 HEARING.—For determinations made under
10 clause (iii) or (iv) of subparagraph (A), the Sec-
11 retary shall provide reasonable notice and an
12 opportunity for a hearing on such determina-
13 tion.

14 “(e) ENFORCEMENT.—

15 “(1) NEEDS ASSISTANCE.—If the Secretary de-
16 termines, for 2 consecutive years, that a State needs
17 assistance under subsection (d)(2)(A)(ii) in imple-
18 menting the requirements of this part, the Secretary
19 shall take 1 or more of the following actions:

20 “(A) Advise the State of available sources
21 of technical assistance that may help the State
22 address the areas in which the State needs as-
23 sistance, which may include assistance from the
24 Office of Special Education Programs, other of-
25 fices of the Department of Education, other

1 Federal agencies, technical assistance providers
2 approved by the Secretary, and other federally
3 funded nonprofit agencies, and require the
4 State to work with appropriate entities. Such
5 technical assistance may include—

6 “(i) the provision of advice by experts
7 to address the areas in which the State
8 needs assistance, including explicit plans
9 for addressing the area for concern within
10 a specified period of time;

11 “(ii) assistance in identifying and im-
12 plementing professional development, in-
13 structional strategies, and methods of in-
14 struction that are based on scientifically
15 based research;

16 “(iii) designating and using distin-
17 guished superintendents, principals, special
18 education administrators, special education
19 teachers, and other teachers to provide ad-
20 vice, technical assistance, and support; and

21 “(iv) devising additional approaches to
22 providing technical assistance, such as col-
23 laborating with institutions of higher edu-
24 cation, educational service agencies, na-
25 tional centers of technical assistance sup-

ported under part D, and private providers
of scientifically based technical assistance.

3 “(B) Direct the use of State-level funds
4 under section 611(e) on the area or areas in
5 which the State needs assistance.

6 “(C) Identify the State as a high-risk
7 grantee and impose special conditions on the
8 State’s grant under this part.

9 “(2) NEEDS INTERVENTION.—If the Secretary
10 determines, for 3 or more consecutive years, that a
11 State needs intervention under subsection
12 (d)(2)(A)(iii) in implementing the requirements of
13 this part, the following shall apply:

14 “(A) The Secretary may take any of the
15 actions described in paragraph (1).

16 “(B) The Secretary shall take 1 or more of
17 the following actions:

18 “(i) Require the State to prepare a
19 corrective action plan or improvement plan
20 if the Secretary determines that the State
21 should be able to correct the problem with-
22 in 1 year.

23 “(ii) Require the State to enter into a
24 compliance agreement under section 457 of
25 the General Education Provisions Act, if

1 the Secretary has reason to believe that
2 the State cannot correct the problem with-
3 in 1 year.

4 “(iii) For each year of the determina-
5 tion, withhold not less than 20 percent and
6 not more than 50 percent of the State’s
7 funds under section 611(e), until the Sec-
8 retary determines the State has sufficiently
9 addressed the areas in which the State
10 needs intervention.

11 “(iv) Seek to recover funds under sec-
12 tion 452 of the General Education Provi-
13 sions Act.

14 “(v) Withhold, in whole or in part,
15 any further payments to the State under
16 this part pursuant to paragraph (5).

17 “(vi) Refer the matter for appropriate
18 enforcement action, which may include re-
19 ferral to the Department of Justice.

20 “(3) NEEDS SUBSTANTIAL INTERVENTION.—
21 Notwithstanding paragraph (1) or (2), at any time
22 that the Secretary determines that a State needs
23 substantial intervention in implementing the require-
24 ments of this part or that there is a substantial fail-
25 ure to comply with any condition of a State edu-

1 cational agency's or local educational agency's eligi-
2 bility under this part, the Secretary shall take 1 or
3 more of the following actions:

4 “(A) Recover funds under section 452 of
5 the General Education Provisions Act.

6 “(B) Withhold, in whole or in part, any
7 further payments to the State under this part.

8 “(C) Refer the case to the Office of the In-
9 spector General at the Department of Edu-
10 cation.

11 “(D) Refer the matter for appropriate en-
12 forcement action, which may include referral to
13 the Department of Justice.

14 “(4) OPPORTUNITY FOR HEARING.—

15 “(A) WITHHOLDING FUNDS.—Prior to
16 withholding any funds under this section, the
17 Secretary shall provide reasonable notice and an
18 opportunity for a hearing to the State edu-
19 cational agency involved.

20 “(B) SUSPENSION.—Pending the outcome
21 of any hearing to withhold payments under sub-
22 section (b), the Secretary may suspend pay-
23 ments to a recipient, suspend the authority of
24 the recipient to obligate funds under this part,
25 or both, after such recipient has been given rea-

1 sonable notice and an opportunity to show
2 cause why future payments or authority to obli-
3 gate funds under this part should not be sus-
4 pended.

5 “(5) REPORT TO CONGRESS.—The Secretary
6 shall report to the Committee on Education and the
7 Workforce of the House of Representatives and the
8 Committee on Health, Education, Labor, and Pen-
9 sions of the Senate within 30 days of taking enforce-
10 ment action pursuant to paragraph (1), (2), or (3),
11 on the specific action taken and the reasons why en-
12 forcement action was taken.

13 “(6) NATURE OF WITHHOLDING.—

14 “(A) LIMITATION.—If the Secretary with-
15 holds further payments pursuant to paragraph
16 (2) or (3), the Secretary may determine—

17 “(i) that such withholding will be lim-
18 ited to programs or projects, or portions of
19 programs or projects, that affected the
20 Secretary’s determination under subsection
21 (d)(2); or

22 “(ii) that the State educational agency
23 shall not make further payments under
24 this part to specified State agencies or
25 local educational agencies that caused or

1 were involved in the Secretary's determina-
2 tion under subsection (d)(2).

3 “(B) WITHHOLDING UNTIL RECTIFIED.—
4 Until the Secretary is satisfied that the condi-
5 tion that caused the initial withholding has
6 been substantially rectified—

7 “(i) payments to the State under this
8 part shall be withheld in whole or in part;
9 and

10 “(ii) payments by the State edu-
11 cational agency under this part shall be
12 limited to State agencies and local edu-
13 cational agencies whose actions did not
14 cause or were not involved in the Sec-
15 retary's determination under subsection
16 (d)(2), as the case may be.

17 “(7) PUBLIC ATTENTION.—Any State that has
18 received notice under subsection (d)(2) shall, by
19 means of a public notice, take such measures as may
20 be necessary to bring the pendency of an action pur-
21 suant to this subsection to the attention of the pub-
22 lic within the State.

23 “(8) JUDICIAL REVIEW.—

24 “(A) IN GENERAL.—If any State is dissat-
25 isfied with the Secretary's action with respect

1 to the eligibility of the State under section 612,
2 such State may, not later than 60 days after
3 notice of such action, file with the United
4 States court of appeals for the circuit in which
5 such State is located a petition for review of
6 that action. A copy of the petition shall be
7 transmitted by the clerk of the court to the Sec-
8 retary. The Secretary thereupon shall file in the
9 court the record of the proceedings upon which
10 the Secretary's action was based, as provided in
11 section 2112 of title 28, United States Code.

12 “(B) JURISDICTION; REVIEW BY UNITED
13 STATES SUPREME COURT.—Upon the filing of
14 such petition, the court shall have jurisdiction
15 to affirm the action of the Secretary or to set
16 it aside, in whole or in part. The judgment of
17 the court shall be subject to review by the Su-
18 preme Court of the United States upon certio-
19 rari or certification as provided in section 1254
20 of title 28, United States Code.

21 “(C) STANDARD OF REVIEW.—The find-
22 ings of fact by the Secretary, if supported by
23 substantial evidence, shall be conclusive, but the
24 court, for good cause shown, may remand the
25 case to the Secretary to take further evidence,

1 and the Secretary may thereupon make new or
2 modified findings of fact and may modify the
3 Secretary's previous action, and shall file in the
4 court the record of the further proceedings.
5 Such new or modified findings of fact shall be
6 conclusive if supported by substantial evidence.

7 “(f) STATE ENFORCEMENT.—If a State educational
8 agency determines that a local educational agency is not
9 meeting the requirements of this part, including the tar-
10 gets in the State's performance plan, the State educational
11 agency shall prohibit the local educational agency from re-
12 ducing the local educational agency's maintenance of ef-
13 fort under section 613(a)(2)(C) for any fiscal year.

14 “(g) RULE OF CONSTRUCTION.—Nothing in this sec-
15 tion shall be construed to restrict the Secretary from uti-
16 lizing any authority under the General Education Provi-
17 sions Act to monitor and enforce the requirements of this
18 title.

19 “(h) DIVIDED STATE AGENCY RESPONSIBILITY.—
20 For purposes of this section, where responsibility for en-
21 suring that the requirements of this part are met with re-
22 spect to children with disabilities who are convicted as
23 adults under State law and incarcerated in adult prisons
24 is assigned to a public agency other than the State edu-
25 cational agency pursuant to section 612(a)(11)(C), the

1 Secretary, in instances where the Secretary finds that the
2 failure to comply substantially with the provisions of this
3 part are related to a failure by the public agency, shall
4 take appropriate corrective action to ensure compliance
5 with this part, except that—

6 “(1) any reduction or withholding of payments
7 to the State shall be proportionate to the total funds
8 allotted under section 611 to the State as the num-
9 ber of eligible children with disabilities in adult pris-
10 ons under the supervision of the other public agency
11 is proportionate to the number of eligible individuals
12 with disabilities in the State under the supervision
13 of the State educational agency; and

14 “(2) any withholding of funds under paragraph
15 (1) shall be limited to the specific agency responsible
16 for the failure to comply with this part.

17 “(i) DATA CAPACITY AND TECHNICAL ASSISTANCE
18 REVIEW.—The Secretary shall—

19 “(1) review the data collection and analysis ca-
20 pacity of States to ensure that data and information
21 determined necessary for implementation of this sec-
22 tion is collected, analyzed, and accurately reported to
23 the Secretary; and

24 “(2) provide technical assistance (from funds
25 reserved under section 611(c)), where needed, to im-

1 prove the capacity of States to meet the data collec-
2 tion requirements.

3 **“SEC. 617. ADMINISTRATION.**

4 “(a) RESPONSIBILITIES OF SECRETARY.—The Sec-
5 retary shall—

6 “(1) cooperate with, and (directly or by grant
7 or contract) furnish technical assistance necessary
8 to, a State in matters relating to—

9 “(A) the education of children with disabil-
10 ities; and

11 “(B) carrying out this part; and

12 “(2) provide short-term training programs and
13 institutes.

14 “(b) PROHIBITION AGAINST FEDERAL MANDATES,
15 DIRECTION, OR CONTROL.—Nothing in this title shall be
16 construed to authorize an officer or employee of the Fed-
17 eral Government to mandate, direct, or control a State,
18 local educational agency, or school’s specific instructional
19 content, academic achievement standards and assess-
20 ments, curriculum, or program of instruction.

21 “(c) CONFIDENTIALITY.—The Secretary shall take
22 appropriate action, in accordance with section 444 of the
23 General Education Provisions Act, to ensure the protec-
24 tion of the confidentiality of any personally identifiable
25 data, information, and records collected or maintained by

1 the Secretary and by State educational agencies and local
2 educational agencies pursuant to this part.

3 “(d) PERSONNEL.—The Secretary is authorized to
4 hire qualified personnel necessary to carry out the Sec-
5 retary’s duties under subsection (a), under section 618,
6 and under subpart 4 of part D, without regard to the pro-
7 visions of title 5, United States Code, relating to appoint-
8 ments in the competitive service and without regard to
9 chapter 51 and subchapter III of chapter 53 of such title
10 relating to classification and general schedule pay rates,
11 except that no more than 20 such personnel shall be em-
12 ployed at any time.

13 “(e) MODEL FORMS.—Not later than the date that
14 the Secretary publishes final regulations under this title,
15 to implement amendments made by the Individuals with
16 Disabilities Education Improvement Act of 2004, the Sec-
17 retary shall publish and disseminate widely to States, local
18 educational agencies, and parent and community training
19 and information centers—

20 “(1) a model IEP form;

21 “(2) a model individualized family service plan
22 (IFSP) form;

23 “(3) a model form of the notice of procedural
24 safeguards described in section 615(d); and

1 “(4) a model form of the prior written notice
2 described in subsections (b)(3) and (c)(1) of section
3 615 that is consistent with the requirements of this
4 part and is sufficient to meet such requirements.

5 **“SEC. 618. PROGRAM INFORMATION.**

6 “(a) IN GENERAL.—Each State that receives assist-
7 ance under this part, and the Secretary of the Interior,
8 shall provide data each year to the Secretary of Education
9 and the public on the following:

10 “(1)(A) The number and percentage of children
11 with disabilities, by race, ethnicity, limited English
12 proficiency status, gender, and disability category,
13 who are in each of the following separate categories:

14 “(i) Receiving a free appropriate public
15 education.

16 “(ii) Participating in regular education.

17 “(iii) In separate classes, separate schools
18 or facilities, or public or private residential fa-
19 cilities.

20 “(iv) For each year of age from age 14
21 through 21, stopped receiving special education
22 and related services because of program comple-
23 tion (including graduation with a regular sec-
24 ondary school diploma), or other reasons, and

1 the reasons why those children stopped receiv-
2 ing special education and related services.

3 “(v)(I) Removed to an interim alternative
4 educational setting under section 615(k)(1).

5 “(II) The acts or items precipitating
6 those removals.

7 “(III) The number of children with
8 disabilities who are subject to long-term
9 suspensions or expulsions.

10 “(B) The number and percentage of children
11 with disabilities, by race, gender, and ethnicity, who
12 are receiving early intervention services.

13 “(C) The number and percentage of children
14 with disabilities, by race, gender, and ethnicity, who,
15 from birth through age 2, stopped receiving early
16 intervention services because of program completion
17 or for other reasons.

18 “(D) The incidence and duration of disciplinary
19 actions by race, ethnicity, limited English proficiency
20 status, gender, and disability category, of children
21 with disabilities, including suspensions of 1 day or
22 more.

23 “(E) The number and percentage of children
24 with disabilities who are removed to alternative edu-
25 cational settings or expelled as compared to children

1 without disabilities who are removed to alternative
2 educational settings or expelled.

3 “(F) The number of due process complaints
4 filed under section 615 and the number of hearings
5 conducted.

6 “(G) The number of hearings requested under
7 section 615(k) and the number of changes in place-
8 ments ordered as a result of those hearings.

9 “(H) The number of mediations held and the
10 number of settlement agreements reached through
11 such mediations.

12 “(2) The number and percentage of infants and
13 toddlers, by race, and ethnicity, who are at risk of
14 having substantial developmental delays (as defined
15 in section 632), and who are receiving early inter-
16 vention services under part C.

17 “(3) Any other information that may be re-
18 quired by the Secretary.

19 “(b) DATA REPORTING.—

20 “(1) PROTECTION OF IDENTIFIABLE DATA.—

21 The data described in subsection (a) shall be pub-
22 licly reported by each State in a manner that does
23 not result in the disclosure of data identifiable to in-
24 dividual children.

1 “(2) SAMPLING.—The Secretary may permit
2 States and the Secretary of the Interior to obtain
3 the data described in subsection (a) through sam-
4 pling.

5 “(c) TECHNICAL ASSISTANCE.—The Secretary may
6 provide technical assistance to States to ensure compliance
7 with the data collection and reporting requirements under
8 this title.

9 “(d) DISPROPORTIONALITY.—

10 “(1) IN GENERAL.—Each State that receives
11 assistance under this part, and the Secretary of the
12 Interior, shall provide for the collection and exam-
13 ination of data to determine if significant
14 disproportionality based on race and ethnicity is oc-
15 curring in the State and the local educational agen-
16 cies of the State with respect to—

17 “(A) the identification of children as chil-
18 dren with disabilities, including the identifica-
19 tion of children as children with disabilities in
20 accordance with a particular impairment de-
21 scribed in section 602(3);

22 “(B) the placement in particular edu-
23 cational settings of such children; and

1 “(C) the incidence, duration, and type of
2 disciplinary actions, including suspensions and
3 expulsions.

4 “(2) REVIEW AND REVISION OF POLICIES,
5 PRACTICES, AND PROCEDURES.—In the case of a de-
6 termination of significant disproportionality with re-
7 spect to the identification of children as children
8 with disabilities, or the placement in particular edu-
9 cational settings of such children, in accordance with
10 paragraph (1), the State or the Secretary of the In-
11 terior, as the case may be, shall—

12 “(A) provide for the review and, if appro-
13 priate, revision of the policies, procedures, and
14 practices used in such identification or place-
15 ment to ensure that such policies, procedures,
16 and practices comply with the requirements of
17 this title;

18 “(B) require any local educational agency
19 identified under paragraph (1) to reserve the
20 maximum amount of funds under section 613(f)
21 to provide comprehensive coordinated early in-
22 tervening services to serve children in the local
23 educational agency, particularly children in
24 those groups that were significantly overidenti-
25 fied under paragraph (1); and

1 “(C) require the local educational agency
2 to publicly report on the revision of policies,
3 practices, and procedures described under sub-
4 paragraph (A).

5 **“SEC. 619. PRESCHOOL GRANTS.**

6 “(a) IN GENERAL.—The Secretary shall provide
7 grants under this section to assist States to provide special
8 education and related services, in accordance with this
9 part—

10 “(1) to children with disabilities aged 3 through
11 5, inclusive; and

12 “(2) at the State’s discretion, to 2-year-old chil-
13 dren with disabilities who will turn 3 during the
14 school year.

15 “(b) ELIGIBILITY.—A State shall be eligible for a
16 grant under this section if such State—

17 “(1) is eligible under section 612 to receive a
18 grant under this part; and

19 “(2) makes a free appropriate public education
20 available to all children with disabilities, aged 3
21 through 5, residing in the State.

22 “(c) ALLOCATIONS TO STATES.—

23 “(1) IN GENERAL.—The Secretary shall allo-
24 cate the amount made available to carry out this

1 section for a fiscal year among the States in accord-
2 ance with paragraph (2) or (3), as the case may be.

3 “(2) INCREASE IN FUNDS.—If the amount
4 available for allocations to States under paragraph
5 (1) for a fiscal year is equal to or greater than the
6 amount allocated to the States under this section for
7 the preceding fiscal year, those allocations shall be
8 calculated as follows:

9 “(A) ALLOCATION.—

10 “(i) IN GENERAL.—Except as pro-
11 vided in subparagraph (B), the Secretary
12 shall—

13 “(I) allocate to each State the
14 amount the State received under this
15 section for fiscal year 1997;

16 “(II) allocate 85 percent of any
17 remaining funds to States on the
18 basis of the States’ relative popu-
19 lations of children aged 3 through 5;
20 and

21 “(III) allocate 15 percent of
22 those remaining funds to States on
23 the basis of the States’ relative popu-
24 lations of all children aged 3 through
25 5 who are living in poverty.

1 “(ii) DATA.—For the purpose of mak-
2 ing grants under this paragraph, the Sec-
3 retary shall use the most recent population
4 data, including data on children living in
5 poverty, that are available and satisfactory
6 to the Secretary.

7 “(B) LIMITATIONS.—Notwithstanding sub-
8 paragraph (A), allocations under this paragraph
9 shall be subject to the following:

10 “(i) PRECEDING YEARS.—No State’s
11 allocation shall be less than its allocation
12 under this section for the preceding fiscal
13 year.

14 “(ii) MINIMUM.—No State’s allocation
15 shall be less than the greatest of—

16 “(I) the sum of—

17 “(aa) the amount the State
18 received under this section for
19 fiscal year 1997; and

20 “(bb) $\frac{1}{3}$ of 1 percent of the
21 amount by which the amount ap-
22 propriated under subsection (j)
23 for the fiscal year exceeds the
24 amount appropriated for this sec-
25 tion for fiscal year 1997;

1 “(II) the sum of—

2 “(aa) the amount the State
3 received under this section for
4 the preceding fiscal year; and

5 “(bb) that amount multi-
6 plied by the percentage by which
7 the increase in the funds appro-
8 priated under this section from
9 the preceding fiscal year exceeds
10 1.5 percent; or

11 “(III) the sum of—

12 “(aa) the amount the State
13 received under this section for
14 the preceding fiscal year; and

15 “(bb) that amount multi-
16 plied by 90 percent of the per-
17 centage increase in the amount
18 appropriated under this section
19 from the preceding fiscal year.

20 “(iii) MAXIMUM.—Notwithstanding
21 clause (ii), no State’s allocation under this
22 paragraph shall exceed the sum of—

23 “(I) the amount the State re-
24 ceived under this section for the pre-
25 ceding fiscal year; and

1 “(II) that amount multiplied by
2 the sum of 1.5 percent and the per-
3 centage increase in the amount appro-
4 priated under this section from the
5 preceding fiscal year.

6 “(C) Ratable reductions.—If the
7 amount available for allocations under this
8 paragraph is insufficient to pay those alloca-
9 tions in full, those allocations shall be ratably
10 reduced, subject to subparagraph (B)(i).

11 “(3) Decrease in funds.—If the amount
12 available for allocations to States under paragraph
13 (1) for a fiscal year is less than the amount allo-
14 cated to the States under this section for the pre-
15 ceding fiscal year, those allocations shall be cal-
16 culated as follows:

17 “(A) Allocations.—If the amount avail-
18 able for allocations is greater than the amount
19 allocated to the States for fiscal year 1997,
20 each State shall be allocated the sum of—

21 “(i) the amount the State received
22 under this section for fiscal year 1997; and

23 “(ii) an amount that bears the same
24 relation to any remaining funds as the in-
25 crease the State received under this section

1 for the preceding fiscal year over fiscal
2 year 1997 bears to the total of all such in-
3 creases for all States.

4 “(B) RATABLE REDUCTIONS.—If the
5 amount available for allocations is equal to or
6 less than the amount allocated to the States for
7 fiscal year 1997, each State shall be allocated
8 the amount the State received for fiscal year
9 1997, ratably reduced, if necessary.

10 “(d) RESERVATION FOR STATE ACTIVITIES.—

11 “(1) IN GENERAL.—Each State may reserve
12 not more than the amount described in paragraph
13 (2) for administration and other State-level activities
14 in accordance with subsections (e) and (f).

15 “(2) AMOUNT DESCRIBED.—For each fiscal
16 year, the Secretary shall determine and report to the
17 State educational agency an amount that is 25 per-
18 cent of the amount the State received under this sec-
19 tion for fiscal year 1997, cumulatively adjusted by
20 the Secretary for each succeeding fiscal year by the
21 lesser of—

22 “(A) the percentage increase, if any, from
23 the preceding fiscal year in the State’s alloca-
24 tion under this section; or

1 “(B) the percentage increase, if any, from
2 the preceding fiscal year in the Consumer Price
3 Index For All Urban Consumers published by
4 the Bureau of Labor Statistics of the Depart-
5 ment of Labor.

6 “(e) STATE ADMINISTRATION.—

7 “(1) IN GENERAL.—For the purpose of admin-
8 istering this section (including the coordination of
9 activities under this part with, and providing tech-
10 nical assistance to, other programs that provide
11 services to children with disabilities) a State may
12 use not more than 20 percent of the maximum
13 amount the State may reserve under subsection (d)
14 for any fiscal year.

15 “(2) ADMINISTRATION OF PART C.—Funds de-
16 scribed in paragraph (1) may also be used for the
17 administration of part C.

18 “(f) OTHER STATE-LEVEL ACTIVITIES.—Each State
19 shall use any funds the State reserves under subsection
20 (d) and does not use for administration under subsection
21 (e)—

22 “(1) for support services (including establishing
23 and implementing the mediation process required by
24 section 615(e)), which may benefit children with dis-
25 abilities younger than 3 or older than 5 as long as

1 those services also benefit children with disabilities
2 aged 3 through 5;

3 “(2) for direct services for children eligible for
4 services under this section;

5 “(3) for activities at the State and local levels
6 to meet the performance goals established by the
7 State under section 612(a)(15);

8 “(4) to supplement other funds used to develop
9 and implement a statewide coordinated services sys-
10 tem designed to improve results for children and
11 families, including children with disabilities and their
12 families, but not more than 1 percent of the amount
13 received by the State under this section for a fiscal
14 year;

15 “(5) to provide early intervention services
16 (which shall include an educational component that
17 promotes school readiness and incorporates
18 preliteracy, language, and numeracy skills) in ac-
19 cordance with part C to children with disabilities
20 who are eligible for services under this section and
21 who previously received services under part C until
22 such children enter, or are eligible under State law
23 to enter, kindergarten; or

1 “(6) at the State’s discretion, to continue serv-
2 ice coordination or case management for families
3 who receive services under part C.

4 “(g) SUBGRANTS TO LOCAL EDUCATIONAL AGEN-
5 CIES.—

6 “(1) SUBGRANTS REQUIRED.—Each State that
7 receives a grant under this section for any fiscal
8 year shall distribute all of the grant funds that the
9 State does not reserve under subsection (d) to local
10 educational agencies in the State that have estab-
11 lished their eligibility under section 613, as follows:

12 “(A) BASE PAYMENTS.—The State shall
13 first award each local educational agency de-
14 scribed in paragraph (1) the amount that agen-
15 cy would have received under this section for
16 fiscal year 1997 if the State had distributed 75
17 percent of its grant for that year under section
18 619(c)(3), as such section was then in effect.

19 “(B) ALLOCATION OF REMAINING
20 FUNDS.—After making allocations under sub-
21 paragraph (A), the State shall—

22 “(i) allocate 85 percent of any re-
23 maining funds to those local educational
24 agencies on the basis of the relative num-
25 bers of children enrolled in public and pri-

1 vate elementary schools and secondary
2 schools within the local educational agen-
3 cy's jurisdiction; and

4 “(ii) allocate 15 percent of those re-
5 maining funds to those local educational
6 agencies in accordance with their relative
7 numbers of children living in poverty, as
8 determined by the State educational agen-
9 cy.

10 “(2) REALLOCATION OF FUNDS.—If a State
11 educational agency determines that a local edu-
12 cational agency is adequately providing a free appro-
13 priate public education to all children with disabil-
14 ities aged 3 through 5 residing in the area served by
15 the local educational agency with State and local
16 funds, the State educational agency may reallocate
17 any portion of the funds under this section that are
18 not needed by that local educational agency to pro-
19 vide a free appropriate public education to other
20 local educational agencies in the State that are not
21 adequately providing special education and related
22 services to all children with disabilities aged 3
23 through 5 residing in the areas the other local edu-
24 cational agencies serve.

1 “(h) PART C INAPPLICABLE.—Part C does not apply
2 to any child with a disability receiving a free appropriate
3 public education, in accordance with this part, with funds
4 received under this section.

5 “(i) STATE DEFINED.—In this section, the term
6 ‘State’ means each of the 50 States, the District of Colum-
7 bia, and the Commonwealth of Puerto Rico.

8 “(j) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated to carry out this section
10 such sums as may be necessary.